

REMARKS

Claims 1-5, 7-10, 12-21, 23-29, 31-35, 37-40 and 42-43 are pending.

Claim 24 is allowed.

Claims 17, 23, 25-29 and 31 are objected to.

Claims 1-5, 7-10, 12-16, 18-21, 32-35, 37-40 and 42-43 are rejected.

The office action dated Nov. 24, 2008 indicates that base claim 24 is allowed. The office action also indicates that dependent claims 23, 40 and 43 contain allowable subject matter.

Claim 25 has been cancelled and claims 26-29 and 31 have been amended to depend properly from base claim 24. Claims 26-29 and 31 should also be allowed.

Base claim 16 has been amended to recite the subject matter of claim 43. Base claim 16 has also been amended for clarity. Claims 18, 20, 21 and 23 have been cancelled. Amended claim 16 and its dependent claims 17, 19 should be allowed.

Base claim 32 has been amended for clarity. Amended base claim 32 still recites the subject matter of claim 43, except for the feature "determining at least one of a presence or an absence of light at the receiver." Given that claim 43 contains allowable subject matter, the undersigned does not understand why claim 32 is not allowed. Clarification is respectfully requested.

Claims 34 and 38 have been cancelled, and claims 35, 37, 39, 42 and 43 have been amended to depend properly from amended claim 32. Claims 33, 35, 37, 39, 42 and 43 should also be allowed since they depend from amended base claim 32.

The office action indicates that base claim 1 is rejected under 35 USC 103 as being unpatentable over Arnon U.S. Publication No. 2002/0114038 in view of others. The '103 rejection has been rendered moot by the amendments above. Base claim 1 has been cancelled and replaced by new base claim 44. Dependent claims 2-4, 7 and

15 have also been cancelled, and claims 5, 8-10, and 12-14 have been amended to depend from new claim 44. New claim 45 also depends from claim 44. Claim 40, which contains allowable subject matter, has been amended to depend from new claim 44

New base claim 44 and its dependent claims are believed to be allowable over the documents made of record. Arnon doesn't teach or suggest computing noise and using the computed noise to alter gain of the APD. Paragraph 238 and Figure 3 show that the "level measured by detector 154 is an average level, the type and parameters of the averaging being set by CPU 81, and is a function of the optical power level, the optical background noise level, and the aggregate noise responsive to a level of the optical carrier." Thus, Arnon doesn't compute noise.

The office action also raises various claims objections and 112 rejections. These objections and rejections are believed to have been overcome by the amendments above.

The Examiner is encouraged to contact the undersigned to resolve any outstanding issues prior to mailing another office action.

Respectfully submitted,

/Hugh Gortler #33,890/
Hugh P. Gortler
Reg. No. 33,890
(949) 454-0898

Date: March 24, 2009